

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

SAMUEL R. GARDNER, II,  
AIS #107989,

Plaintiff,

V.

CASE NO. 2:07-CV-1063-WKW  
[WO]

LEON FORNISS, et al.,

Defendants.

## RECOMMENDATION OF THE MAGISTRATE JUDGE

Samuel R. Gardner, II [“Gardner”], a state inmate, filed this 42 U.S.C. § 1983 action on December 5, 2007. Subsequently, and prior to the defendants’ filing their special report and answer, Gardner filed a motion to dismiss in which he concedes the defendants cannot provide the requested relief. *Court Doc. No. 16*.

Upon consideration of the plaintiff's motion to dismiss, the court concludes that the motion is due to be granted. Furthermore, since the defendants have filed no responsive pleading addressing the claims raised in the complaint, the court concludes that this case should be dismissed without prejudice. *See* Rule 41(a)(1), *Federal Rules of Civil Procedure*.

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that the plaintiff's motion to dismiss be granted and that this case be dismissed without prejudice. It is further

ORDERED that on or before March 10, 2008 the parties may file objections to the

Recommendation. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which the party is objecting. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and advisements in the Magistrate Judge's Recommendation shall bar the party from a de novo determination by the District Court of issues covered in the Recommendation and shall bar the party from attacking on appeal factual findings in the Recommendation accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982). *See Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981, *en banc*), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

DONE, this 27<sup>th</sup> day of February, 2008.

/s/ Susan Russ Walker  
SUSAN RUSS WALKER  
UNITED STATES MAGISTRATE JUDGE